



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/412,404	10/05/1999	JOSHUA D. KAPLAN	106.48	9614

7590 04/03/2003

MICHAEL E DERGOSITS  
DERGOSITS & NOAH LLP  
FOUR EMBARCADERO CENTER  
SUITE 1150  
SAN FRANCISCO, CA 94111

EXAMINER

FADOK, MARK A

ART UNIT PAPER NUMBER

3625

DATE MAILED: 04/03/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/412,404

Applicant(s)

KAPLAN, JOSHUA D.

Examiner

Mark A Fadok

Art Unit

3625

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 2/20/2003.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 21-38 and 52-60 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 21-38 and 52-60 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

site is stored along with the user identification data in a manner that allows pre-selected portions of pre-recorded video products previewed by remote user to be associated with the remote user who previewed them (see response to claims 21 and 25).

In response to claim 27, Music Boulevard teaches wherein the portions of the plurality of different pre-selected pre-recorded video products are identified and called from the central storage device using unique product codes. Product codes such as SKU's are old and well known in the art and are often used to identify products in inventory. Therefore, it would have been inherent in Music Boulevard that product codes product codes would be utilized, because the product would need to be identified by some kind of code in order to keep track of the thousands of different products (see response to claim 26).

In response to claim 28, Music Boulevard teaches a machine executable program of instructions that provides a purchasing process that allows the user to place an order for purchasing at least one video product (USATODAY.com).

In response to claim 29, Music Boulevard teaches a machine executable program of instructions that provides a listing process that provides the user with dynamic lists of the pre-selected portions of the plurality of different pre-recorded video products that have been previewed the most (Jensen2, page 8, lines 1-16).

In response to claim 30, Music Boulevard teaches a machine executable program of instructions that provides a recording process that provides the user with a record of previous previews by the user (see response to claim 29)

In response to claim 32, Music Boulevard teaches a machine executable program of instructions that provides a first market research process that correlates the user's rating with the user identification data, for compiling market research data (See response to claim 31 and Jensen page 24, lines 16-25).

In response to claim 33, Music Boulevard teaches machine executable program of instructions that provides a second market research process that correlates the user identification data with all previews performed by the remote user, for compiling market research data (Jensen2, page 21, line 15 to page 24, line 25).

In response to claim 34, Music Boulevard discloses a computer system comprising:

a) a networked central host server that retrieves and transmits a pre-selected portion of a pre-recorded video product upon request by a remote user over a telecommunications link, the central host server hosting a web site that enables preview of pre-selected portions of pre-recorded video products on a computer associated with the remote user;

b) a central storage device that stores pre-selected portions of a plurality of different pre-recorded video products, the central storage device coupled to the central host server;

c) machine executable programs of instructions that provide: an identification (ID) process that recognizes user identification data transmitted from the remote user's computer to the central host server, which specifically identifies the remote user to the central host server prior to preview of the pre-selected portion of the pre-recorded video

product by the remote user; a tracking process that tracks the remote user's progress through the network web site; a control process that provides the remote user with interactive control over preview of the pre-selected portion of the pre-recorded video product; and a demographic process, associated with the central host server, that collects demographic information regarding the user, wherein data corresponding to the remote user's activities on the network web site is stored along with the user identification data in a manner that allows pre-selected portions of pre-recorded video products previewed by a remote user to be associated with the remote user who previewed them (see response to claim 1 and Jensen2, page 21, line 15 to page 24, line 25).

In response to claim 36, Music Boulevard teaches a machine executable program of instructions that provides a first market research process that correlates the user rating with the user identification data, for compiling market research data (see response to claim 32).

In response to claim 37, Music Boulevard teaches machine executable program of instructions that provides a second market research process that correlates the user ID with all previews perform by the user, for compiling market research data (see response to claim 33).

In response to claim 38, Music Boulevard teaches wherein the demographic information is selected from the group of information types consisting of age, sex, income, ethnicity, education level, marital status, hobbies, and occupation (Jensen2, page 24, lines 17-20).

In response to claim 53, Music Boulevard teaches gathering, from the network web site, customized market research information according to one or more desired parameters selected from the group consisting of unit sales, time periods, geographic markets, specific video categories, configuration breakdowns, and demographic user profiles (Jensen2, page 8, lines 1-16).

In response to claim 56, Music Boulevard teaches machine executable program of instructions that provides a customizable market research process that gathers, from the network web site, customized market research information according to one or more desired parameters selected from the group consisting of unit sales, time periods, geographic markets, specific video categories configuration breakdowns, and demographic user profiles (see response to claim 53).

In response to claim 59, Music Boulevard teaches a machine executable program of instructions that provides a customizable market research process that gathers, from the network web site, customized market research information according to one or more desired parameters selected from the group consisting of unit sales, time periods, geographic markets, specific video categories, configuration breakdown and demographic user profiles (see response to claim 53).

**Claims 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Music Boulevard in view of Brickman, and further in view of Koz et al (6,188,428).**

In regards to claim 42, Music Boulevard teaches memory storage devices (col. 19, lines 43-49), but does not specifically state RAID. KOZ teaches a random access data

storage system subsystem **78** that includes a "Redundant Array of inexpensive Disks" (RAID (col. 8, lines 54-58). It would be obvious to a person of ordinary skill in the art to included in Music Boulevard/Brickman a Raid array drive as taught by Koz, because if one memory device were to be down the other could supplant it and provide uninterrupted data.

**Claims 22,31,35,52,54,55,57,58,60 rejected under 35 U.S.C. 103(a) as being unpatentable over Music Boulevard in view of Brickman, and further in view of Miller et al (5,842,199).**

In regards to claims 52,54,55,57,58,60, Music Boulevard teaches the collection of customer profile information which is used to determine preferences (Jensen2, page 24, lines 16-21)), but does not specifically mention rating a product using between 3 and 8 discrete rating selections, displayed graphically on a computer display. Miller teaches that explicit rating methods in collaborative filtering systems are single keystrokes entered by users. The keystrokes usually represent values along a single ordered dimension, discretized for ease-of-entry. Miller does not limit the number of discrete rating selection and therefore could include about 5. It would be obvious to a person of ordinary skill in the art to include in Music Boulevard/Brickman the rating method as taught by Miller, because the ratings can provide value to a web site by providing visitors information that may reduce the time needed to make a purchase.

***Response to Arguments***

Applicant's arguments with respect on the merits of claims 21,25-38 and 52-60 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

Several cited references provide strong clues concerning the existence of materials, not yet of record, relevant to applicant's invention. Applicant is reminded of his duty to disclose under 37 CFR 1.56.

Applicant's submission of an information disclosure statement under 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p) on 8/9/2002 prompted the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 609(B)(2)(i). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.



Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Mark Fadok** whose telephone number is **(703) 605-4252**. The examiner can normally be reached Monday thru Friday 8:00 AM to 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Wynn Coggins** can be reached on **(703) 308-1344**.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the **Receptionist** whose telephone number is **(703) 308-1113**.

Any response to this action should be mailed to:

***Commissioner of Patents and Trademarks***

***Washington D.C. 20231***

or faxed to:

**(703) 305-7687** [Official communications; including  
After Final communications labeled  
"Box AF"]

**(703) 746-7206** [Informal/Draft communications, labeled  
"PROPOSED" or "DRAFT"]

Hand delivered responses should be brought to Crystal Park 5, 2451 Crystal Drive, Arlington, VA, 7<sup>th</sup> floor receptionist.

Art Unit: 3625

Mark Fadok

Patent Examiner



WYNN W. COGGINS  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600